

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0212 RO

Responsible Officer

Withholding Tax

FOR TAX PERIODS: April, October, 1996 and August, September, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Responsible Officer Liability – Duty to Remit Withholding Taxes

Authority: IC 6-3-4-8(g); Indiana Department of Revenue v. Safayan (1995) 654 N.E.2nd 270.

Taxpayer disputes the determination that he had a duty to remit the corporation's withholding taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue timely assessed the corporation liabilities for withholding taxes unpaid to the state for April and October 1996 and August and September, 1997. The corporation did not pay these taxes and the Indiana Department of Revenue assessed the liabilities against Taxpayer as a responsible officer of the corporation. Taxpayer timely protested this assessment. More facts will be provided as necessary.

RESPONSIBLE OFFICER LIABILITY-DUTY TO REMIT WITHHOLDING TAXES

DISCUSSION

The proposed withholding taxes were issued under authority of IC 6-3-4-8(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest"

According to the Indiana Department of Revenue v. Safayan (1995) 654 N.E. 2nd 279, page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." For the first two liabilities, Taxpayer, by his own admission, was a vice-president and general manager of the corporation with the authority to sign checks for the day to day operation of the business. Taxpayer did sign checks for taxes and did sign the accompanying tax returns. Taxpayer, therefore, had the authority to see that the taxes were paid as set out in the Safayan case. As such, Taxpayer did have the statutory duty to remit the trust taxes during April and October of 1996. Taxpayer's protest to the taxes assessed against him for April and October, 1996 is denied.

The last two liabilities assessed against Taxpayer were due on September 30, 1997 and October 30, 1997. The situation at the corporation changed significantly, however, in September 1997. On September 15, 1997 Taxpayer's employment by the corporation was terminated and he resigned as vice-president. Taxpayer enclosed a copy of his last pay stub, dated September 15, 1997, a copy of his W2 from the corporation showing the same gross income as on the September 15, 1997 pay stub and a copy of Taxpayer's letter of resignation as vice president. Taxpayer also submitted a letter from the corporation CPA while the corporation employed Taxpayer. The CPA stated in his letter that Taxpayer "could not have written that check because he was gone, did not have check writing authority and the returns were not prepared as of the date he was relieved." After September 15, 1997, Taxpayer did not meet the standard required by Safayan to be considered an officer responsible for the payment of withholding trust taxes. Taxpayer's protest is sustained concerning the liabilities for the tax periods, August and September 1997.

FINDING

Taxpayer's protest is denied in part and sustained in part.